

Attachment D

**Clause 4.6 Variation Request -
Minimum Internal Apartment Size**

Clause 4.6 Variation Request – Recommended Internal Area (Studio)

545-549 South Dowling Street, Surry Hills





'Gura Bulga'

Liz Belanjee Cameron



'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Property Industry Foundation. It is submitted to City of Sydney Council (the Council) in support of a development application (DA) Council for transitional care housing at 545-549 South Dowling Street, Surry Hills (known as Haven House).

The proposed development seeks consent for:

- Demolition of the existing building, including tree removal.
- Construction and use of a part three (3) / part four (4) storey residential flat building (RFB) comprising;
 - 10 apartments with the following mix:
 - 1 x studio apartment.
 - 9 x two-bedroom apartments.
 - Communal facilities including;
 - Lower ground floor communal space consisting of a hot desk area, kitchen facility, storage and meeting rooms.
 - Communal roof top terrace.
 - Back of house facilities, comprising;
 - Bulk store room.
 - 11 secure bicycle storage spaces.
 - Resident locker area.
 - Plant room.
- Landscaping works including 13% deep soil planting.

Clause 4.6 of the Sydney Local Environmental Plan 2012 (Sydney LEP) enables City of Sydney to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This request relates to minor variation to clause 30(1)(b) of *State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development*, relating to the to the recommended minimum design criteria for internal unit size as set out in the Apartment Design Guide (ADG). This clause 4.6 variation should be read in conjunction with the original Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 10 October 2022., including supporting documentation as modified by the response to Council Requests for Information.

This clause 4.6 variation request demonstrates that compliance recommended internal unit size of the ADG is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard. It demonstrates that, notwithstanding the non-compliance with the recommended minimum unit size standard, the proposed development will:

- Provide a high standard of amenity for future residents and well-proportioned spaces.
- Achieve sufficient natural ventilation and daylight access to all habitable rooms.
- Provide well designed and high amenity attributes of the apartment that is less than the minimum recommended internal area.
- Is consistent with the wider approach to apartment design for inner city/mixed-use areas.
- Continue to satisfy the objectives of the standards and design criteria, namely to provide a unit size which achieves sufficient amenity.
- Will promote the orderly and efficient use of land, in accordance with the objects of the *Environmental Planning and Assessment Act 1979* (the Act).
- Will ensure a development that is suitable for the site and is in the public interest.

In light of the above, the consent authority can be satisfied that there is sufficient justification for the variation to the development standard, as proposed in accordance with the flexibility allowed under clause 4.6 of the Sydney LEP 2012.

2.0 Development Standard to be Varied

2.1 Development Standard - recommended minimum internal area (studio)

Council staff have provided an interpretation that recommended minimum internal area criteria of the ADG is a development standard due to clause 30(1)(b) of SEPP 65. This clause states the following:

30 Standards that cannot be used as grounds to refuse development consent or modification of development consent

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,

(b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,

(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

While the design criteria of the ADG have historically not been interpreted as 'development standards', Council staff interpret the recommended minimum internal area design criteria to be a development standard, as the design criteria are referenced in clause 30 of SEPP 65 (refer above **bold**) as a standard that cannot be used for refusal if the criteria are satisfied. Guidance on the approach to this clause is also provided under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

2.2 Variation Sought

This clause 4.6 variation request seeks to justify contravention of the recommended minimum internal area dimension of studio unit L3-01 as specified in Part 4D of the Apartment Design Guide. The apartment size and layout provisions of the ADG are:

4D – Apartment size and Layout

The layout of an apartment establishes the way rooms of different functions are arranged and located, the size of the rooms, the circulation between rooms and the degree of privacy for each room.

In addition, the layout directly impacts the quality of residential amenity by incorporating appropriate room shapes and window designs to deliver daylight and sunlight, natural ventilation, and acoustic and visual privacy. The apartment layout also includes private open space and conveniently located storage.

The objectives of the standard are below, with extracts of the objectives and the design guidance, including the recommended minimum internal area for the relevant apartment types – in this case study (see outlined in red in **Figure 1**).

- **4D-1**-The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.
- **4D-2**-Environmental performance of the apartment is maximised.
- **4D-3**-Apartment layouts are designed to accommodate a variety of household activities and needs.

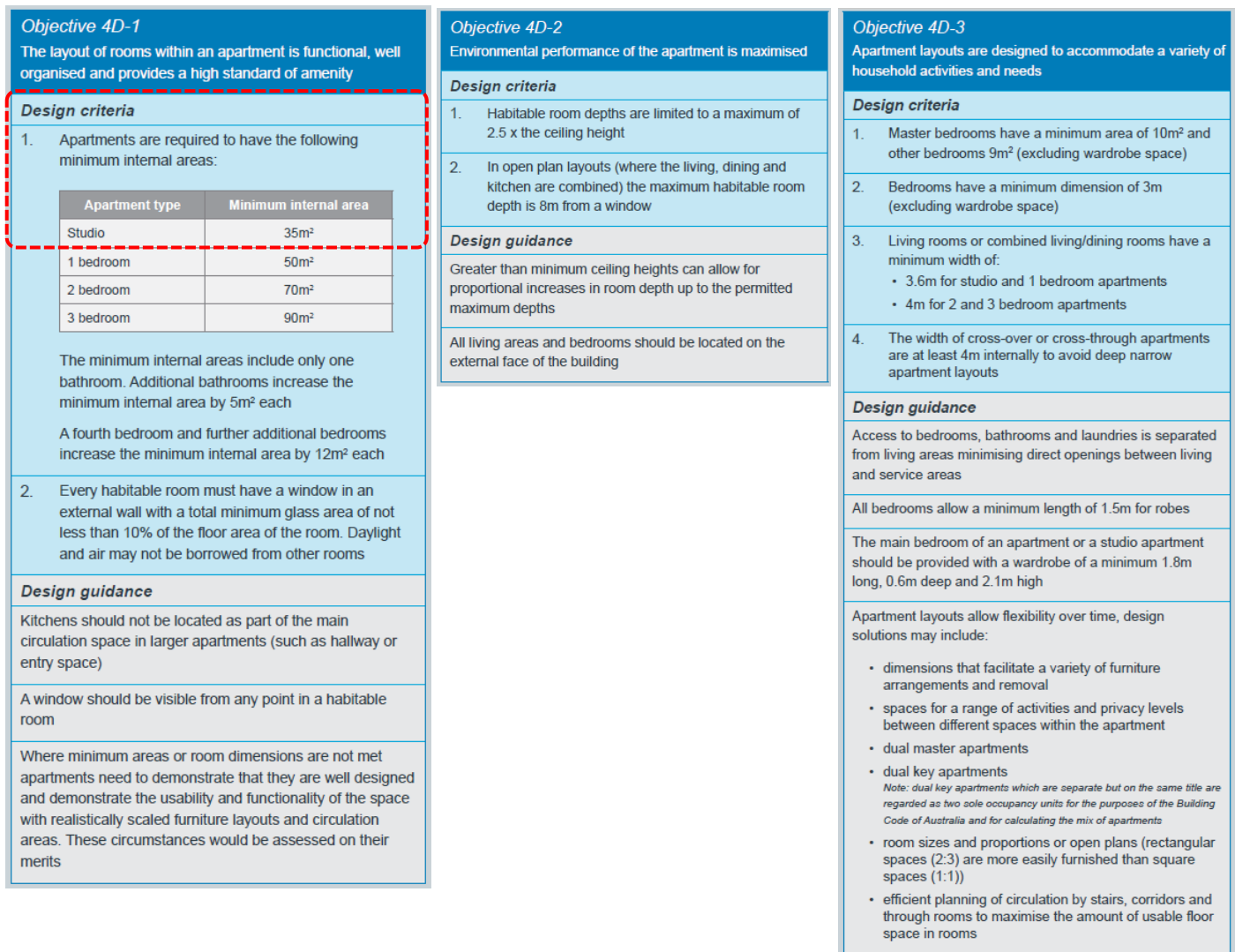


Figure 1 Part 4D of the Apartment Design Guide

Source: Apartment Design Guide

2.3 Extent of Variation Proposed

As shown on the Architectural Plans (**Appendix A**), unit L3-01 proposed an internal area of 29sqm and external area of 7sqm, this is a variation to the 35sqm recommended minimum internal area for the studio apartment type (as set out in the design guidance of the ADG). The variation to the recommended minimum internal dimensions specified in Part 4D (as per Clause 30(1)(b)) is 6m or 17% variation.

An extract of the location and layout of the proposed studio apartment within the development is show in **Figure 2**.

3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Sydney LEP provides that:

4.6 Exceptions to development standards

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Further, clause 4.6(4)(a) of the Sydney LEP provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827; and
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action).
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (Al Maha).
5. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511.
6. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386.
7. *Moskovich v Waverley Council* [2016] NSWLEC 1015.
8. *Baron Corporation Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 1552 (Baron Corporation).

The relevant matters contained in clause 4.6 of the Sydney LEP, with respect to a variation to the recommended minimum internal area size development standard, are each addressed below, including with regard to these decisions.

3.1 Role of the Consent Authority

The role of the consent authority in considering this written request for a clause 4.6 variation has been recently explained by the NSW Court of Appeal in *Initial Action* and in *Al Maha* to require that the consent authority needs to be satisfied in relation to two matters:

- That the applicant's request has adequately addressed the matters in clause 4.6(4)(a)(i).
- That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.

The consent authority is required to form these two opinions first before it considers the merits of the DA, and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matters. In particular, the consent authority needs to be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified.

This report provides the basis for the consent authority to reach the required level of satisfaction.

This clause 4.6 variation request is proposed in context of Clause 30(1)(b) and 4D of the ADG. Relevant matters contained in clause 4.6 of the Sydney LEP 2012, with respect to the internal area standard, are each addressed below.

3.2 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Sydney LEP is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of this particular site because the objectives of the recommended minimum internal area development standard and the zone are achieved notwithstanding the non-compliance with the standard (**First Method**).

3.2.1 The underlying objectives or purposes of the development standard

The objective of the development standard contained in Part 4D of the ADG is as follows:

- **4D-1**-The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.
- **4D-2**-Environmental performance of the apartment is maximised.
- **4D-3**-Apartment layouts are designed to accommodate a variety of household activities and needs.

An assessment of the areas of non-compliance against the objectives of the recommended minimum internal area provisions is provided in **Table 1** below.

Table 1 Consistency with objects of standard

Object	Comment
The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity	The proposed spatial layout of the room provides a functional, practical and well considered internal amenity of the proposed space. The location of the unit at the top of the building with expansive western aspect and private external area provides high levels amenity for the future occupants – noting the conditions of the use for the lead tenant/caretaker of the building.

Object	Comment
Environmental performance of the apartment is maximised	The proposal has been carefully designed to manage the orientation and aspect, while ensuring environmental performance is maximised. This includes relatively narrow depths of apartment with large windows to the west, and 'pop out' elements to provide good levels of ventilation and access to fresh air, but at the same time maintains privacy and shading to the western aspect.
Apartment layouts are designed to accommodate a variety of household activities and needs	The unit has been designed to be fit for purpose for the intended use, but ensuring that fundamental dimensions of bedroom and living area are achieved, through an open plan layout and large, functional bathroom (recognising the typology as a studio). Internal storage and wardrobe spaces is also provided, along with access to an external terrace.

3.3 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the Sydney LEP requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. There are sufficient environmental planning grounds to justify variation to the minimum unit size development standard in this specific instance, as described under the relevant headings below.

3.3.1 Ground 1: Site Specific Use

As set out in the Development Application, the proposal is for the provision of transitional housing for homeless youth (aged 25 and under), design as a residential flat building. In this case, The Salvation Army will operate the premises as a stepping stone for young people who are entering from crisis accommodation into a transitional home for stability.

The development will provide for the Salvation Army's integration with the community in Sydney and enable a range of complementary functions to support young people who are at risk of homelessness by providing housing and support services such as case management, counselling and training. The accommodation will assist young persons with establishing a routine, returning to school, or moving on to further education.

In alignment with Council's comment to reduce the perceptible bulk of the building to the original DA, the project architects Fitzpatrick and Partners understood several exercises to consolidate the north-western portion of the building at the top floor to re-work the studio apartment and the communal rooftop area. This resulted in an amendment to the studio apartment reducing in size to 29sqm and increase in communal open space to the rooftop to 26sqm, a balance of the proposal to reduce bulk and scale of the built form, and provide amenity to all occupants of the building, as well as the studio.

As such, the use of the site, and the proposed studio the subject of this clause 4.6, is unique to the circumstances of the site and will be controlled through the development consent. As discussed with Council in the process of design progressions of the DA, the proposed studio has been designed (and located adjacent to the external communal space) to use by a lead tenant that operates in a similar role to a caretaker/resident advisor for the site. The occupant will have access to all shared facilities and communal open space.

3.3.2 Ground 2: Amenity

Whilst the proposed studio is less than the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide, the unit achieves high levels of amenity. The unit is sited at the top of the building with outlook and access to sunlight to the west. The unit also has direct access to a 7sqm balcony on the western elevation, and access to the adjoining communal open area, immediately adjoining the dwelling. As such, whilst the unit is less than the dimensions request as prescribed by the Apartment Design Guide, the circumstances of the site and specific design choices, ensures that on balance across all measures, the dwelling achieves high levels of amenity.

Environmental Impacts (lack of)

The proposed development, despite the contravention to the room size development standard, does not cause significant additional environmental impact which would render it incompatible with its surrounding land uses and ensures the proposal is appropriate for the context of the site. In particular, the non-compliance will not result in adverse amenity impacts to surrounding residential receivers or to the occupant of the room itself.

In regard to privacy for surrounding residential receivers, as a corner site, the building benefits from separation from adjacent developments. Accordingly, the variation to the unit size will not cause any significant additional impacts to the existing residential receivers surrounding the site in terms of overlooking and privacy. In regard to view impacts, there are no known views obtained over the existing site. Accordingly, the layout and location of the studio will not disrupt views from surrounding properties.

Consistency with Objects of the EP&A Act

In *Initial Action*, the court stated that the phrase “*environmental planning grounds*” is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in **Table 2** we consider the proposal is broadly consistent with each object, notwithstanding the proposed variation of the minimum internal area development standard.

Table 2 Consistency with objects of the EP&A Act

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	The proposed unit size variation will ensure the ability for the operations to provide for an on site lead tenant/caretaker, whilst not reducing the capacity for the provisions of units for the proposed use. As such, the minor variation to the minimum internal unit size promotes the additional provision of housing.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposed variation allows for the useability of the highest storey for a dwelling as well as lead tenant unit through the inclusion of the lift, providing a highly sustainable development outcome. The use of this unit will be controlled through the development consent, anticipated to be conditioned in its operation.
(c) to promote the orderly and economic use and development of land	The site is strategically located, in close proximity to existing heavy rail, bus and light rail service future commuters. Strict compliance with the maximum building height control (and proposed studio) would be a lost opportunity to enable services and the provision of the lead tenant/caretake studio and enable additional accommodation for youth in need, adding to the diversity of Surry Hills. The proposal, including the minor variation, facilitates as provide a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification or overdevelopment of the land, whilst still providing high levels of amenity.
(d) to promote the delivery and maintenance of affordable housing	The proposal delivers affordable housing in the form of transitional care housing for homeless youth.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposal will not have any impact on threatened species or ecological communities.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	The proposal will not impact built or cultural heritage. Refer to the Heritage Impact Assessment provided at Appendix L of the original DA package for further details.
(g) to promote good design and amenity of the built environment	The proposal will promote good design and amenity of the built environment by exhibiting a high quality and sculptured design which adds to the architectural diversity of Surry Hills, including high level of amenity to the proposed studio, despite the size proposed.

Object	Comment
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposal will comply with the relevant provisions of the BCA and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this proposal, however, the proposal has adhered to the required planning processes for the site and scale of development and implements the strategic planning priorities for employment growth in Surry Hills and more broadly City of Sydney.
(j) to provide increased opportunity for community participation in environmental planning and assessment	The proposed development has been publicly exhibited in accordance with the requirements of Council's Community Participation Plan.

3.3.3 Conclusion on clause 4.6(3)(b)

There are sufficient environmental planning grounds to justify contravening from the development standard as:

- The variation to unit size for the studio will not result in adverse environmental impacts or lack of amenity to the proposed unit.
- The proposed variation to the minimum unit size allows for the provision of a space for lead tenant/caretaker whilst not unreasonably reducing the delivery of housing for transitional housing for homeless youth.

3.4 Clause 4.6(4)(i): The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

This written request adequately and comprehensively addresses the matters required to be demonstrated by subclause (3).

3.5 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

In *Initial Action* at [27], it was held that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. The proposal is in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone.

Consistency Caselaw

Consistency has been defined throughout caselaw including the following Land and Environment Court cases:

- *Addenbrooke v Woollahra Municipal Council* [2008] NSWLEC 190.
- *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21.
- *Raïssis v Randwick City Council* [2019] NSWLEC 1040.
- *Abrams v Council of City of Sydney* [2018] NSWLEC 1648.
- *Kingsland Developments v Parramatta Council* [2018] NSWLEC 1241.
- *Dem Gillespies v Warringah Council* (2002) 124 LGERA 147.

In these cases, consistency is considered to be different to that of 'achievement'. The term 'consistent' has been considered in judgements of the Court in relation to zone objectives and has been interpreted to mean "compatible" or "capable of existing together in harmony" (*Dem Gillespies v Warringah Council* (2002) 124 LGERA 147; *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC 190) or "not being antipathetic" (*Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21). Whichever interpretation is adopted, the test of "consistency" is less onerous than that of "achievement".

3.5.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the recommended minimum internal area development standard, for the reasons discussed in **Section 3.1.2** of this report.

3.5.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the MU1 – Mixed Use Zone, as demonstrated below. The minor departure from the room size standard contained in Part 4D of the ADG does not result in any inconsistencies with the objective of the zone.

To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

The proposal provides a residential flat building for the purposes of transitional care. This land use is compatible to the Surry Hills area, which generally comprises of residential accommodation with part ground floor non-residential associated use.

To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

The proposed development will result in the renewal of the site which currently comprises an existing underutilised and dilapidated building and does not represent the most efficient use of land in the context of the surrounding residential context. It will provide an opportunity for development that will enhance the street frontage and pedestrian experience, increasing the vibrancy, diversity and functionality of the streetscape. The ground floor of the proposed development will comprise of productive space and will be utilised by the occupants of the building on a daily basis.

To minimise conflict between land uses within this zone and land uses within adjoining zones.

The site does not adjoin other land use zones and does not provide a land use that would result in a conflict with the existing character of residential development within the immediate context.

To encourage business, retail, community and other non-residential land uses on the ground floor of buildings

The ground floor of the building has been designed in a manner that provides non-residential land-uses which will comprise co-working spaces, private meeting rooms, computer lab and kitchen space that has been designed with the purpose of enhancing the skillset of occupants within the building and will be managed by PIF.

To ensure uses support the viability of centres.

The proposal will replace a tired and aged building with a new development that is seen to contribute to further rejuvenation of the immediate area and reactivate the site. Apartments will be provided on the ground floor, activating the public domain to generate a vibrant street environment and assisting with passive surveillance. The proposed development has also been designed with high quality amenities, including the rooftop which will include a communal space fitted with BBQ and seating amenities as well as landscaping and communal gardens. Overall, the proposal will provide for a competitive and attractive residential building which will, in turn, work to provide a vibrant urban environment.

To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

As detailed in the SEE, the site is located in walking distance to a number of existing public transport options, which will help to maximise the use of public transport patronage to and from the site. The proposal provides residential accommodation to youth who will need to utilise these key public and active transport nodes provided around the site. Further, the proposal will provide back of house facilities inclusive of 11 secure bicycle storage spaces to spur walking and cycling.

3.6 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning,*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are addressed in detail below.

3.6.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the recommended minimum internal area development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the most recent metropolitan plan for Sydney, A Plan for Growing Sydney in that it:

- Safe medium-term transitional accommodation while the young person's homelessness is resolved.
- Affordable housing to young people engaged in employment, education or training that provides a stable base from which young people can participate in society, achieve their education and employment goals, and sustain positive health outcomes.
- Connection for young people to services, including employment, education, and training.
- Opportunity to develop and maintain skills to improve young people's ability to increase their social and community support networks.
- Does not affect any heritage assets.
- Is well located to public transport connections.

Furthermore, the variation of unit size for the studio does not result in any significant adverse impact on the surrounding area, surrounding residences and enables a high quality design that is operational by the residents within the building.

3.6.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

As outlined above, there are sufficient environmental planning grounds to warrant contravention of the development standard and it is considered to be in the public interest of the variation to be supported in this case.

The proposed development will allow for a single studio unit that is below the minimum unit size as prescribed by the ADG, whilst ensuring appropriate amenity throughout the development and not inappropriately.

The proposed variation will not generate any external impacts (such as parking, traffic or privacy), but instead will provide a dedicated and high amenity unit for occupancy by the lead tenant/caretaker of the building. As such, the proposal will not interfere with the public interest but rather provide an improved outcome and supply of for safe medium-term transitional accommodation while a young person's homelessness is resolved.

3.6.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

There are no other matters required to be taken into consideration.

4.0 Conclusion

The assessment above demonstrates that compliance with the clause 30(1)(b) relating to the internal area of the recommended number recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the recommended minimum internal area as set out in 4D of the ADG, the proposed development:

- Achieves the objectives of Part 4D of the ADG.
- Provide a high standard of amenity for future residents and well-proportioned spaces.
- Achieve sufficient natural ventilation and daylight access to all habitable rooms.
- Provide well designed and high amenity attributes of the apartment that is less than the minimum recommended internal area.
- Is consistent with the wider approach to apartment design for inner city/mixed-use areas.
- Continue to satisfy the objectives of the standards and design criteria, namely to provide a unit size which achieves sufficient amenity.
- Will promote the orderly and efficient use of land, in accordance with the objects of the *Environmental Planning and Assessment Act 1979* (the Act).

Will ensure a development that is suitable for the site and is in the public interest.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Sydney LEP.